IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL Nos. 650 of 2007
In
CIVIL APPLICATION - FOR INTERIM RELIEF No. 2090 of 2007
In
SPECIAL CIVIL APPLICATION No. 6568 of 2006
with
LETTERS PATENT APPEAL Nos. 651 to 922 of 2007
with
LETTERS PATENT APPEAL No. 1181 of 2007
in
CIVIL APPLICATION No. 2090 of 2007
In
SPECIAL CIVIL APPLICATION No. 6568 of 2006
with
LETTERS PATENT APPEAL Nos.1182 to 1453 of 2007
with
LETTERS PATENT APPEAL Nos.1454 of 2007
In
CIVIL APPLICATION No. 1814 of 2007
To
LETTERS PATENT APPEAL Nos. 1455 to 1488 of 2007
with
LETTERS PATENT APPEAL No. 923 of 2007
In
CIVIL APPLICATION NO. 1814 of 2007
To
LETTERS PATENT APPEAL Nos. 924 to 957 of 2007
With
CIVIL APPLICATION No. 9525 of 2007
In
LETTERS PATENT APPEAL No. 1181 of 2007
To
CIVIL APPLICATION Nos. 9526 to 9797 of 2007
With
CIVIL APPLICATION NO. 9847 of 2007
In
LETTERS PATENT APPEAL No. 1454 OF 2007
With
CIVIL APPLICATION NO. 9805 of 2007
In
LETTERS PATENT APPEAL No. 1455 of 2007
To
CIVIL APPLICATION No. 9838 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

HONOURABLE MR.JUSTICE SHARAD D.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

J A CHAUHAN & 272 - Appellants
Versus
STATE OF GUJARAT & 3 - Respondents

==========

Appearance :

MR SHALIN N MEHTA for Appellants in Letters Patent Appeal Nos. 650 to 922 of 2007.

MR MIHIR JOSHI, Additional Advocate General with Ms.Asmita Patel for respondent-State in L.P.A. 650/2007.

MR SS SHAH, GOVERNMENT PLEADER, with Asmita Patel, AGP and Varsha Brahmbhatt, AGP, for respondent-State in L.P.A. 651 to 922 of 2007.

MR SS SHAH, GOVERNMENT PLEADER for appellant-State in L.P.A. 1181 to 1488 of 2007.

MR SHALIN N MEHTA for respondent No.1 and MR GUNVANT R THAKAR for Respondent No.2-Board, in L.P.A. 1181 to 1488 of 2007.

MR SHALIN N.MEHTA for appellants in L.P.A. 923 to 957 of 2007

MR MIHOR JOSHI, Additional Advocate General with Ms.Varsha Brahmbhatt for respondent-State in L.P.A. 923/2007.
MR SUNIT S SHAH, Government Pleader WITH MS. ASMITA PATEL, A.G.P. AND MS.VARSHA BRAHMBHATT, A.G.P. for Respondents-State in L.P.A. 924 to 957 of 2007.

MR SUNIT S SHAH, GOVERNMENT PLEADER for applicant-State in Civil Application Nos.9525 to 9797 of 2007 and C.A. Nos. 9847/2007 and 9805 to 9838 of 2007.

==========

CORAM : HONOURABLE MR.JUSTICE A.L.DAVE
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 24/10/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

This group of appeals challenges the order passed by the learned Single Judge in Civil Application No. 2090/2007 in Special Civil Application No. 6568/2006, to Civil Application No.2362/2007 with Civil Application Nos. 1814/2007 to 1848/2007, on 11.4.2007, granting interim relief in favour of the applicants-petitioners in the Special Civil Applications.

2. The issues involved in the group of petitions can be briefly stated thus :

The original petitioners are employees of the Gujarat Rural Labour Welfare Board. The Board was constituted in 1982 with an object of upliftment of rural and agricultural labourers, by the State of Gujarat. The petitioners belong to two categories, viz. (i) Kendra Sanchalak, and (ii) Jilla Sanchalak. They were appointed on fixed pay, which came to be revised in the year 1996, and presently they are

given fixed monthly pay of Rs. 900/- and Rs.1300/-, respectively. In the petitions, they have claimed following reliefs:

> "(A) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, direction or order, commanding the respondents herein to permanently absorb the petitioners in service on the posts currently occupied by them;
>
> (B) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, direction or order, commanding the respondents herein to treat the petitioners as State Government servants/employees and to ensure that the petitioners are treated at par in all respects with State Government servants/employees of equal rank by affording the petitioners pay scales, increments, dearness allowance, bonus, house rent allowance, medical allowance, leave travel concession, earned leave, sick leave and retiral benefits like pension, provident fund, gratuity etc. with effect from the respective dates of entry into service of the petitioners;
>
> (C) Your Lordships may be pleased to pass a cease and desist order to permanently restrain the respondents herein from terminating the services of the petitioners from the posts currently occupied by them;
>
> (D) Your Lordships may be pleased to issue a

writ of mandamus or any other appropriate writ, direction or order, commanding the respondents herein to apply the doctrine of equal pay for equal work to the petitioners by declaring them to be similar in all respects to the Kendra Sanchalaks of the Gujarat Labour Welfare Board for the City of Ahmedabad and the Kendra Sanchalaks of the Gujarat Social Welfare Board, and be further pleased to direct the respondents herein to provide to the petitioners salary/wages and other service benefits equal in sum and measure to that of the Kendra Sanchalaks of the Gujarat Labour Welfare Board for the City of Ahmedabad and the Kendra Sanchalaks of the Gujarat Social Welfare Board;

(E) Your Lordships may be pleased to declare the action of the respondents herein of paying wages less than the minimum wage rate to the petitioners since inception as illegal, unconstitutional, violative of Articles 14, 16, 21, 23 and 39 of the Constitution of India;

(F) Your Lordships may be pleased to declare the action of the respondents herein of paying the petitioners a paltry fixed sum of Rs. 900/- per month (in case of Kendra Sanchalaks) and Rs.1300/- per month (in case of Jilla Sanchalaks) as whimsical, capricious, arbitrary, illegal, unconstitutional, smacking of bonded labour, null and void;

(G) Pending admission and final hearing of the

present petition, Your Lordships may be pleased to restrain the respondents herein from terminating the services of the petitioners from the posts currently occupied by them;

(H) Pending admission and final hearing of the present petition, Your Lordships may be pleased to direct the respondents herein to pay at least the basic minimum wage prevailing in the State of Gujarat to the petitioners, and be further pleased to pay the arrears of difference of wages calculated on the basis of the minimum wage rate right from the date of entry into service in case of each petitioner".

3. The applicants then preferred Civil Applications for interim relief, making following prayers:

"(A) Pending admission and final hearing of Special Civil Application No. 6568/2006, Your Lordships may be pleased to direct the opponents herein to pay to the applicants at least the basic minimum wage prevailing in the State of Gujarat, and be further pleased to pay the arrears of difference of wages calculated on the basis of the minimum wage rate from the date of entry into service till the present date;

(B) In the alternative, pending admission and final hearing of Special Civil Application No. 6568/2006, Your Lordships may be pleased to

direct the opponents herein to pay to the applicants the pay scale that is payable to a Class-IV Government servant, and the arrears of difference of wages pursuant thereto; and

(C) Your Lordships may be pleased to pass any other appropriate order, as deemed fit, in the interest of justice."

4. The petitioners are 273 in number, out of whom 261 are Kendra Sanchalaks and rest are Jilla Sanchalaks. The petitioners' demand was mainly founded on following aspects:

(1) The applicants are appointed pursuant to a properly coordinated regular selection process that includes a written test and an oral interview.

(2) The applicants are full-time which means that they start work at 9.00 a.m. and work upto 1.00 p.m., and thereafter, start work at 3.00 p.m. and work upto 8.00 p.m.

(3) The applicants are appointed under the service rules that are approved by the Labour and Employment Department, State of Gujarat.

(4) The applicants are fully qualified to be appointed to the posts that they are currently occupying. All the applicants have passed the SSC examination. Some of them possess a Bachelor's degree also.

(5) The appointment of the applicants is neither

ad hoc nor contractual nor back-door nor casual.

(6) The applicants are appointed against posts of Kendra Sanchalaks and Jilla Sanchalaks created in the Gujarat Rural Labour Welfare Board.

(7) An Expert Committee constituted by the Gujarat Rural Labour Welfare Board vide resolution dated 13.1.1991 has recommended way back in the year 1992 that those of the applicants who are Kendra Sanchalaks are entitled to be placed in regular pay scale of Rs. 1350-2200 (pre-revised). When the said recommendation was made, the Kendra Sanchalaks were being paid a fixed sum of Rs.500/- per month only. The said Expert Committee has also observed that the Kendra Sanchalaks of the Gujarat Rural Labour Welfare Board are required to be treated at par with the Kendra Sanchalaks of the Gujarat Labour Welfare Board for the City of Ahmedabad as there is more or less complete similarity between these two groups. In fact, the Committee has further observed that the duties and functions of the applicants were found to be taxing and arduous than the duties and functions of the Kendra Sanchalaks of the Gujarat Labour Welfare Board for the City of Ahmedabad.

5. On the other hand, the case of the respondents before the learned Single Judge was that the Minimum Wages Act, 1948 was not applicable to the case of the petitioners, as they were honorary Sanchalaks and

were not covered under the Schedule Employment under the Minimum Wages Act. The respondents also denied the claim of the petitioners that they are entitled to regularisation and equal salary as paid to the employees of Gujarat Labour Welfare Board. It was also contended that the Gujarat Labour Welfare Board is collecting cess from the workers and factory establishment owners, and also that the Board is getting grant-in-aid from the State Government. On the other hand, Gujarat Rural Labour Welfare Board-respondent No.2, is totally depending on 100% grant-in-aid released by the State Government and is not collecting any type of cess from the agricultural rural labourers or farmers. The petitioners are being paid honorarium for rendering social services for the upliftment of the agricultural rural workers. It is the case of the other side that, formerly, the Board was running Group Insurance Scheme for landless labours, Group Insurance Scheme for forest workers, Group Insurance Scheme for salt workers, Group Insurance Scheme for fishermen, maternity benefit aid to agricultural labours, and Scheme of Pakka Quarters to salt pan workers. These activities have now been stopped and/or diverted to other departments by the State Government, such as, Health and Family Welfare

Department, Industries and Mines Department etc.

6. The learned Single Judge after considering the rival side contentions, inter alia, that the original petitioners are working for more than 10 to 15 years with the respondent-Board; that they are working as full-time employees and are receiving salary or wages and that the remuneration is much less than even the minimum wages prescribed under the Minimum Wages Act; that they would not be in a position to bargain, as they are in need of job to live with dignity, and that it was also found that an Expert-Committee was appointed, who gave its report in the year 1992 in favour of the original petitioners, but, the State Government has not taken any action thereafter, except that some rise was given in the year 1997, and it was found that remuneration received by the original petitioners was so inadequate that survival would be a problem. The learned Single Judge observed that the question, as to whether Minimum Wages Act is applicable to the respondent-Board or not, has to be kept open for final hearing and the provisions are incorporated in the order only for forming prima facie opinion in the matter, and ultimately held that the petitioners-

appellants were entitled to an increase of Rs. 600/- per month *Pendente Lite* in the remuneration. The Kendra Sanchalaks, thus, were held to be entitled to remuneration of Rs.1500/- with effect from 1st January, 2007 and District Sanchalaks were held to be entitled to remuneration of Rs.1900/- with effect from the said date. A direction was ordered to hold good till the petitions were heard and finally decided. The learned Judge also directed the respondent-Board to pay the arrears from 1st January, 2007 to 30th March, 2007 within a period of two months from the date of receipt of the order and thereafter to pay the increased remuneration, as directed in the order, regularly every month.

6.1 While concluding, the learned Judge observed that considering the request made by the learned Government Pleader on behalf of the State, not being objected to by the learned advocate for the petitioners Mr.Mehta, the matters were required to be listed for final hearing on 25.7.2007 and directed the Registry to list the matters accordingly.

7. Aggrieved by the aforesaid order, the original petitioners have preferred Letters Patent Appeal Nos.

650 to 922 of 2007.

7.1 The State Government is also aggrieved by the said order and has preferred Letters Patent Appeal Nos. 1181 to 1453 of 2007.

7.2 Alongwith all the appeals, civil applications for interim relief are preferred.

8. For the sake of convenience, the original petitioners are referred to as "the petitioners" and the original respondents are referred to as "the respondents" in this judgment.

9. Learned advocate Mr.Shalin Mehta for the petitioners submitted that it is an irony that the petitioners, who are engaged in the work of upliftment of rural and agricultural labourers and to ensure that agricultural labourers get minimum wages, are not getting even the minimum wages for their own maintenance. Mr. Mehta submitted that fair and minimum wage is a right as envisaged under Article 21 of the Constitution of India, which is violated in the case of the present petitioners. He submitted that the Government has to act as a model-employer, whereas in the instant case, the Government is not acting as such. The petitioners have been working

with the respondent-Board for a number of years as full-time employees. When they have raised demand of permanent absorption and parity with the State Government employees, the Government has come out with a stand that they are not employees, but, are `honorary social workers', who are being paid honorarium. There has not been any increase in remuneration of the petitioners for number of years and honorarium which is paid is not sufficient for maintenance of their families. Mr.Mehta, therefore, submitted that this is an exploitation. Mr. Mehta submitted that the object of the Board is to uplift agricultural and rural labourers and ensure payment of minimum wages. That by itself may be a social service rendered by the Government through the Board. But, the petitioners, who are working with the Board, cannot be said to be social workers. For the petitioners, it is employment. He also contended that the petitioners' appointment cannot be regarded as back-door entry or irregular employment. The petitioners have been able to establish the ingredients for interim relief, viz., prima facie case, irreparable injury and balance of convenience, and therefore, the learned Single Judge ought to have directed the respondent-Board to pay the minimum

wages prevailing in the State of Gujarat to the petitioners. He, therefore, submitted that the appeals may be allowed.

10. Learned Additional Advocate General appears for the respondent-State in Letters Patent Appeal Nos. 650/2007 & 923/2007. He contended that a mandatory direction is given while granting interim relief, which is uncalled for. He submitted that mandatory direction by way of interim relief can be given very sparingly only in a situation where non-grant of such mandate would result into dismissal of the petition. He submitted that such orders, revising the pay on ad hoc basis, ought not to have been passed by the learned Single Judge. He submitted that the petitioners' Letters Patent Appeals may, therefore, be dismissed.

11. The learned Government Pleader Mr.Shah appears for the State Government in the appeals preferred by the State. He submitted that the order passed by the learned Single Judge is 'sympathy-based', and is beyond the scope and outside the jurisdiction of the Court exercising writ powers. He submitted that fixing of wages or honorarium and increase therein,

is a matter of policy and, therefore, could not have been exercised by the learned Single Judge while considering interim relief and by granting interim relief. Mr. Shah also submitted that the question, whether the Minimum Wages Act would be applicable to the present case, has been kept open by the learned Single Judge. The applicability of Shops and Establishment Act is also a matter of doubt and without any basis. Mr.Shah submitted that `sympathy' is not a relevant ground, as has been held by the Apex Court in various decisions. Mr.Shah submitted that revision in the pay-scale was not so imminently required, requiring passing of an interim order. Mr.Shah submitted that in the matter of a policy decision, the Court should not interfere, unless it is found that the rights envisaged under Articles 14 & 16 of the Constitution of India are violated, which is not the case here. He relied on certain decisions in support of his contentions.

12. Learned advocate Mr.Thakar, who appears for respondent No.2-Board in all the matters, submitted that the Board is financed by the State Government and hence, the Board adopts the arguments advanced by the learned Government Pleader.

13. We have considered the rival side contentions. At the outset, we may state that these appeals arise out of an interim order mandatory in nature, passed in the Special Civil Applications and the main petitions are still pending to be heard on merits.

13.1 The Supreme Court has held that an interim order of mandatory nature can be passed in a situation, where, withholding or non-granting of such interim relief, would result into virtual dismissal of the main petition itself. While doing so, the Court has to examine existence, or otherwise, of a strong prima facie case, balance of convenience and irreparable injury, but, such exercise of powers should be in rare cases and under compelling circumstances [DEORAJ V. STATE OF MAHARASHTRA AND OTHERS (2004)4 SCC 697].

13.2 The Supreme Court has also ruled that a relief, which can be granted only at the final hearing of the matter, should not, ordinarily, be granted by way of an interim relief in exercise of powers under Article 226 of the Constitution of India [State of U.P. & Ors. v. Desh Raj (2007)1 SCC 257].

13.3 Keeping in mind the above settled legal proposition, if the order in question is examined, we find that the petitioners, in their main petitions, had made prayers for a writ of mandamus commanding the respondents to permanently absorb the petitioners in service on the posts currently occupied by them, commanding the respondents to treat the petitioners as State Government servants and to treat them at par, in all respects, with the State Government servants of their rank and to restrain them from terminating the services of the petitioners with a further writ of mandamus on the respondents to apply the doctrine of `equal pay for equal work', with a declaration that the act of respondents of paying wages less than the minimum wages, is illegal and unconstitutional.

13.4 In the Civil Application for interim relief, the prayer was for a direction to the opponents to pay to the applicants at least the basic minimum wages prevailing in the State of Gujarat.

14. From the order impugned, we notice that the learned Single Judge has kept the question about

applicability of the Minimum Wages Act to the petitioners' case open, and has expressed no opinion thereon. Unless a view is expressed, even prima facie, that the provisions of the Minimum Wages Act are applicable, the interim order sought in the civil application could not have been granted.

14.1 We may note that the question of applicability of the Minimum Wages Act would involve a large number of questions of fact which may be disputed and evidence may be required to be led. `Employer-Employee' relationship itself is disputed. The foundation of dispute is appointment order which speaks of honorarium and not salary or wages.

15. We find that the letters of appointment of the petitioners indicate that they were appointed purely on *ad hoc* basis on fixed honorarium and it is heavily relied upon by the respondents to contend that there was absence of relationship of `employer' and `employee', which is yet to be adjudicated upon in the main petition.

16. It is also to be noted that the respondents are seriously contesting the petitioners' right of

permanency on regularization of services and treatment at par with other government employees. There are several facts which are disputed, viz. (1) whether, there is relationship of `employer' and `employee', (2) whether the petitioners are engaged in full time job, (3) whether the Minimum Wages Act would be made applicable to the case of the petitioners, (4) whether the Shops and Establishments Act would be applicable, (5) whether the report of an Expert Committee would be binding to the respondents, (6) whether the Board is Government or not.

16.1 These are the questions which would govern the case of the petitioners at the stage of final hearing. They will also have bearing on the triple tests to be considered while examining the question of interim relief viz. (1) Prima facie case, (2) Balance of convenience, and (3) Irreparable injury. These questions are yet to be adjudicated upon. Decision thereon is yet to be arrived at. Any view expressed thereon may have direct impact on the final outcome of the petitions and in absence of such observations made on above, in our view, mandatory direction could not have been given.

17. Several larger questions have been raised by the learned advocate for the petitioners saying that by non-grant of sufficient remuneration, right to life is denied, and fair and reasonable wage is a constitutional right, as envisaged under Articles 21 & 23 of the Constitution of India. These are the questions which are yet to be answered finally in the petitions and, therefore, interim relief of mandatory nature ought not to have been granted.

18. It is true that the remuneration received by the petitioners may be inadequate, but, they have been working for a long time. Non-grant of mandatory interim relief would not have resulted in dismissal of petitions, nor can it be considered as a situation equivalent to dismissal of the petitions and, therefore, interim relief in the form of a mandate could not have been granted in view of the Supreme Court decision.

18.1 The relief sought in the petitions finally is virtually the relief sought by way of interim relief i.e. increase in the remuneration, which can be said to have been granted partly by the present order. The Supreme Court has observed that reliefs which can be

granted only at the final hearing stage of the petition, are not ordinarily, to be granted by way of an interim order. In our opinion, therefore, the order impugned in the appeals cannot be upheld. The set of appeals preferred by the State Government merits acceptance. The order passed by the learned Single Judge in Civil Application No. 2090/2007 in Special Civil Application No.6568/2006 to Civil Application No. 2362/2007 with Civil Application Nos.1814 to 1848 of 2007 deserves to be and is hereby set aside.

19. In view of the fact that the appeals preferred by the State Government have been allowed and the order granting *ad hoc* increase in the remuneration is set aside, the appeals filed by the petitioners for grant of minimum wages cannot be accepted. In fact, the learned Single Judge has kept the question as to the applicability of the Minimum Wages Act open. In our view, therefore, the appeals preferred by the petitioners merit dismissal and are hereby dismissed.

Order on C.A. Nos. 9525/07 to 9797/07, C.A.No. 9847/2007, C.A.Nos.9805 to 9838/2007.

Since the appeals are finally disposed of, these Civil Applications would not survive and are disposed of accordingly.

Considering the sensitivity of the issue involved and the fact that in the last part of the impugned order, the petitions were ordered to be fixed for final hearing, we request the learned Single Judge to dispose of the petitions on merits at an early convenience.

[A.L.DAVE,J.]

[SHARAD D.DAVE,J.]

(patel)